

NO. 5:13-CV-812-FL

Appellant forecasts three issues for resolution on appeal: 1) whether appellees failed to present substantial evidence in opposition to summary judgment on the issue of discharge; 2) whether appellant presented substantial evidence at summary judgment sufficient to show an absence of genuine issue of fact, and 3) whether state court orders of injunction, contempt, and sanctions have collateral estoppel effect on the same issues and evidence presented to the bankruptcy court. (Motion for Leave to Appeal ¶ 13).

None of these issues meet the criteria for interlocutory appeal. The determination of whether appellees or appellant presented sufficient evidence to justify granting or denial of summary judgment does not involve a controlling question of law as to which there is substantial ground for difference of opinion. The bankruptcy court applied the well established summary judgment standard to documents and materials in the record, concluding that issues of fact remained for trial, a determination of which is not susceptible to interlocutory review. (See Order Denying Mot. Sum. J. 4-5).

As to the final issue raised by appellants, the bankruptcy court determined that it could not rely upon the asserted collateral estoppel effect of a state court default judgment entered as a discovery sanction to reach the conclusion that a debt is nondischargeable under 11 U.S.C. § 523(a). The bankruptcy determined that Sartin v. Macik, 535 F.3d 284 (4th Cir. 2008), foreclosed reliance upon collateral estoppel in such circumstances. Although the Fourth Circuit in Sartin recognized that North Carolina courts may yet adopt an alternative approach to the “collateral estoppel effect to at least some default judgments,” the court held that it was precluded from so holding in absence of a change in North Carolina law to that effect. Id. at 291. Upon review of North Carolina case law post-Sartin, the court has identified no case reopening the question raised in Sartin. Accordingly, the bankruptcy court’s application of Sartin does not present a controlling question of law as to

which there is substantial ground for difference of opinion.

In light of the above, the court finds the third factor for interlocutory appeal inconclusive. While reversal as to any issues raised by appellant may help to resolve litigation in appellant's favor in bankruptcy court, appellate proceedings followed by order affirming the bankruptcy court's ruling would only serve to further delay final resolution of the bankruptcy matter.

Accordingly, the court in its discretion finds no basis upon which to exercise its appellate review over the bankruptcy court's order denying appellant's motion for summary judgment.

CONCLUSION

Based upon the foregoing, the court DENIES appellant's motion for leave to appeal. The Clerk is directed to close this case.

SO ORDERED, this the 18th day of December, 2013.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style. Below the signature is a horizontal line.

LOUISE W. FLANAGAN
United States District Judge